IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4242 OF 1991

Mustaq Hasan Sayyad, Age 33. Occ. Business, Panshop situated at C.S.No.5540/2, Laxmi Market, Miraj.	.. Petitioner. (Org.Deft.No.2)
V/s.	
1. Chanbai Noormohamad Saudagar, Age 49 yrs. Occ.Household, 2. Salim Noormohamad Saudagar, Age 23 yers. Occ. Nil. 3. Shamshadbegum Noormohamad Saudagar Age 18 yrs. Occ.Nil 4. Chandabai @ Chandra Noormohamad Saudagar, Age 45 yrs.Occ.Household, 5. Hasan Moh. Haji Moosabhai Saudagar Age 50, Occ.Trade. 6. Gous Moh. Haji Moosabhai Saudagar, Age 45 yrs,Occ.Trade; 7. Rajak Haji Moosabhai Saudagar, Age 39 yrs. Occ.Agri. 8. Chandbai Hamja Monim,Age 42 yrs. Occ.Household. Nos.1 to 8 all residents of Momin Mohalla, At-Post: Miraj, Tal-Miraj,Dist.Sangli 9. Dattatraya Narsinga Landage, Age 45 yrs. Agr. and Trade, R/at Narsingh Niwal High - School, High School Rd., At Post.Miraj. 10. Siddu Chinkara Deodiga, Adult. Occ.Hotel Business, Ganesh Colddrink, Near Laxmi Market,Miraj. 11.Sou. Hibja Sakhar Bijapure, Age 40 yrs. Occ.Household,	.. Respondents (Org.Plnts.1-8 (Org.Defts.1, 3,11.)

Resident of Momin Galli,Karad
Dist. Satara.

Ms.Nayana Thatte h/f. Mr.Vaze for the Petitioner.

Mrs.Shakuntala A.Mudbidri for the Respondent Nos.1 to 7 & 9.

CORAM : S. A. BOBDE, J.

DATED : 26th JULY, 2007.

ORAL JUDGMENT :-

. This writ petition is directed against the judgment of the court of Additional District Judge, Sangli in Regular Civil Appeal No. 478 of 1984, decreeing the suit for eviction, particularly, against the main tenant -Landge and also against the petitioner, who claims to be a sub-tenant in respect of Pan shop which is located within the premises which were given to said Landge on lease by the respondent Nos. 1 to 8, who are hereinafter called as the landlords. The landlords issued suit notice on 24th June, 1977, interalia, making a demand for unpaid rent from 15.09.1968 to 15.09.1977. The notice dated 26.06.1973 was for the earlier period from 14.09.1968 to 15.09.1977 and as obtained, the landlord had not taken any action in pursuance to the said notice.

2. The said notice was issued to the original

defendant No.1 Dattatraya Landge (hereinafter referred to as Landge), the petitioner and another defendant Sayyad.

3. The present suit was filed in the year 1977. Admittedly, the petitioner did not make any application for fixing of standard rent under section 11 of the Bombay Rent Act. On 08.10.1984, the suit was decreed. The trial court only passed a decree for the sum of Rs.5526.52/- but refused to pass a decree for eviction. While passing the decree, the trial court also decided the standard rent application of Landge.

4. The respondents landlords preferred an appeal in the court of 4th Additional District Judge, Sangli who had decreed the suit for eviction. The lower appellate court framed the following points for determination :

Points	Findings.
1) Is it proved by the plaintiffs that defendant No.1, the tenant, without their consent, given in writing, has erected on the suit premises the permanent structure?	No.
2) Is it proved that defendant No.1 sublet the suit premises to defendant Nos.2 and 3 or any of them?	No.

3)	Is it proved by the plaintiffs that the suit premises are reasonably and bonafide required by them for occupation by themselves?	No.
4)	It is proved by the plaintiffs that defendant No.1 was in arrears of rent for more than six months and thereby became defaulter to seek the ejectment?	: Not proved as the default was there in not paying rent regularly during pendency proceedings of suit & appeal.
5)	Is the suit notice legal valid and proper ?	Yes.
6)	Are plaintiffs entitled to ejectment & possession as sought?	Yes.
7)	What should be the standard rent of the suit premises ?	At Rs.101/- p.m. as decided in separate proceedings in CRA Nos.24/84 & 25/84 in between the parties
8)	What relief and order?	As per final order.

And the lower appellate court came to the afore-mentioned conclusion against the said issues. By a long and elaborate judgement, which is difficult to comprehend, the lower appellate court, however, decreed the respondents' suit on the ground that the defendant No.1 Landge was in arrears of rent for more than six months and thereby, the defendant No.1 became defaulter.

5. The lower appellate court took note of the fact that originally Landge had preferred an application for fixing of standard rent in which the interim rent was fixed at Rs.75/- per month on 12.09.1973. Thereafter, the appellate court had fixed the standard rent at Rs.150/- per month on 9.10.1984. In revision, the court had reduced the rent to Rs.101/- per month on 23.03.1999. The lower appellate court thus found that Landge had not paid rent at the rate of Rs.101/- per month and was, therefore, in arrears and liable to be evicted.

6. The learned counsel for the petitioner submitted that the lower appellate court ought not to have passed a decree for eviction on the ground of non- payment of rent at the rate of Rs.101/- per month since the standard rent which was fixed was Rs.75/- per month and that Landge having deposited Rs. 75/- per month in the court during the pendency of the suit, the appellate court could not have relied upon a subsequent increase of Rs.101/- and granted eviction.

7. In the first place, it is difficult to see how these submissions can be advanced on behalf of the petitioner, who neither made any application for fixation of the standard rent and has not paid any

amount of rent to the landlord. There is no dispute that the standard rent was fixed at the rate of Rs.101/- in a civil revision application by an order dated 23.11.1990. This standard rent was obviously fixed with retrospective effect from the date of the application, i.e. 1973. Obviously, therefore, it cannot be validly contended by the petitioner that the petitioner cannot be evicted. Even Landge is said to have deposited arrears of rent, apparently, at the rate of Rs. 75/- per month for the period upto 8.10.1984. The petitioner has not been able to point out that if Landge has deposited any amount at the rate of Rs.101/- per month, after the standard rent was finally fixed by the revisional Court on 23.11.1990.

8. As observed earlier, in any case, the petitioner is not entitled to take the benefit of any deposit which Landge may have made in compliance of section 12 of the Bombay Rent Act, which, as observed earlier, he has not made in accordance with the law.

9. Hence, there is no merit in the petition, which is hereby dismissed. Interim order stands vacated.

(S.A.BOBDE,J.)

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